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14 Toshiba America, Inc., Toshiba America
15 Information Systems, Inc., Toshiba America
16 Consumer Products, L.L.C., and Toshiba
17 America Electronic Components, Inc.*

18 [Additional stipulating parties on signature
19 page]
20

21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA
23 (SAN FRANCISCO DIVISION)

24 IN RE: CATHODE RAY TUBE (CRT)
25 ANTITRUST LITIGATION

Case No. 07-5944 SC
MDL No. 1917

26 This Document Relates to:
27

28 *The Indirect Purchaser Action*

THE TOSHIBA DEFENDANTS AND
INDIRECT PURCHASER
PLAINTIFFS' STIPULATION AND
[PROPOSED] ORDER
WITHDRAWING PENDING
MOTIONS

THE TOSHIBA DEFENDANTS AND INDIRECT PURCHASER PLAINTIFFS'
STIPULATION AND [PROPOSED] ORDER WITHDRAWING PENDING MOTIONS
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1 Defendants Toshiba Corporation, Toshiba America, Inc., Toshiba America
2 Information Systems, Inc., Toshiba America Consumer Products, L.L.C., and Toshiba
3 America Electronic Components, Inc., (collectively, the "Toshiba Defendants") and the
4 Indirect Purchaser Plaintiffs (the "IPPs") have conferred by and through their counsel and,
5 subject to the Court's approval, HEREBY STIPULATE AS FOLLOWS:
6

7 WHEREAS, at the time of this stipulation, the Toshiba Defendants have certain
8 summary judgment motions, motions *in limine*, and miscellaneous non-dispositive motions
9 pending against the IPPs;

10 WHEREAS, at the time of this stipulation, the IPPs have certain motions *in limine* and
11 motions to compel pending against the Toshiba Defendants;

12 WHEREAS, the parties have executed a settlement agreement that would release the
13 IPPs' claims against the Toshiba Defendants (the "Settlement Agreement");

14 WHEREAS, the Settlement Agreement is subject to the approval of the Court and will
15 become final and conclusive only when the Court has entered a final order approving the
16 Settlement Agreement under Federal Rule of Civil Procedure 23(e), a final judgment is entered
17 dismissing the underlying action with prejudice as it relates to IPPs' claims against the Toshiba
18 Defendants, and all relevant appeals have been exhausted;

19 WHEREAS, in light of the Settlement Agreement, the Toshiba Defendants seek to
20 withdraw all pending motions solely as they pertain to the IPPs, subject to reinstatement in the
21 event that the Settlement Agreement does not become final and conclusive;

22 WHEREAS, in light of the Settlement Agreement, the IPPs seek to withdraw all pending
23 motions solely as they pertain to the Toshiba Defendants, subject to reinstatement in the event that
24 the Settlement Agreement does not become final and conclusive;

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1 WHEREAS, the Toshiba Defendants and the IPPs do not seek to withdraw any motions to
2 the extent that they pertain to any other plaintiff or any other defendant;

3 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED between
4 counsel as follows:

- 5 1. The Toshiba Defendants withdraw the following motions with respect to the IPPs:
 - 6 a. The Toshiba Defendants' Motion for Summary Judgment Concerning
7 Withdrawal (ECF No. 2995);
 - 8 b. The Toshiba Defendants' Motion *in Limine* to Preclude Evidence
9 Regarding Damages Allegedly Suffered by the New York Indirect
10 Purchaser Plaintiffs Class Prior to December 23, 1998 (ECF No. 3573);
 - 11 c. The Toshiba Defendants' Motion *in Limine* to Preclude IPP Alter Ego
12 Theories of Liability at Trial (ECF No. 3576);
 - 13 d. The Toshiba Defendants' Motion to Decertify the Statewide IPP Classes
14 for Damages (ECF No. 3585);
 - 15 e. The Toshiba Defendants' Motion for an Order to Direct Certain Indirect
16 Purchaser Class Representatives to Testify Live at Trial (ECF No. 3588);
17 and
 - 18 f. The Toshiba Defendants' Motion to Strike Class Representatives With
19 Inadequate Proof of Their Individual Purchases of Televisions or Monitors
20 (ECF No. 3595).
- 21 2. The Toshiba Defendants withdraw the following separately-filed joinders with
22 respect to the IPPs:

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1 a. The Toshiba Defendants' Joinder to the Hitachi Parties' Motion for
2 Summary Judgment Based Upon the Lack of Evidence of Participation in
3 the Alleged Conspiracy (ECF No. 3010);
4
5 b. The Toshiba Defendants' Joinder to the Hitachi Defendants' Motion for
6 Summary Judgment Based Upon Withdrawal and the Statutes of
7 Limitations (ECF No. 3011);
8
9 c. Toshiba Defendants' Joinder to Philips Electronics North America
10 Corporation's, Philips Taiwan Limited's, and Philips Do Brasil Ltda.'s
11 Motion for Partial Summary Judgment (ECF No. 3028);
12
13 d. The Toshiba Defendants' Joinder to Koninklijke Philips N.V.'s, Philips
14 Electronics North America Corporation's, Philips Taiwan Limited's, and
15 Philips Do Brasil Ltda.'s Motion for Summary Judgment Against Indirect
16 Purchaser Plaintiffs Who are Natural Persons Residing in California (ECF
17 No. 3042);
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19 e. The Toshiba Defendants' Joinder to Koninklijke Philips N.V.'s Motion for
20 Summary Judgment (ECF No. 3045); and
21
22 f. The Toshiba Defendants' Limited Joinder to Defendants' Motion *in Limine*
23 #4 to Exclude LCD and Other Non-CRT Product Conspiracies (ECF No.
24 3692).

25 3. The Toshiba Defendants withdraw their joinders to the following joint motions
26 with respect to the IPPs:
27
28 a. Defendants' Motion for Partial Summary Judgment as to Indirect Purchaser
Plaintiffs' and Certain Direct Action Plaintiffs' State Law Claims on
Statute of Limitations Grounds (ECF No. 2978);

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- b. Defendants' Motion for Partial Summary Judgment on Plaintiffs' Indirect Purchaser Claims Based on Foreign Sales (ECF No. 3006);
- c. Defendants' Joint Motion for Summary Judgment Based Upon Plaintiffs' Failure to Distinguish Between Actionable and Non-Actionable Damages Under the FTAIA (ECF No. 3008);
- d. Defendants' Joint Motion for Partial Summary Judgment Against Indirect Purchaser Plaintiffs and Certain Direct Action Plaintiffs for Lack of Antitrust Injury and Antitrust Standing Under Federal and Certain State Laws (ECF No. 3050);
- e. Defendants' Motion *in Limine* #3: To Exclude All Evidence and Reference at Trial to the U.S. Department of Justice's Criminal Investigations of the Cathode Ray Tube Industry (ECF No. 3556);
- f. Defendants' Motion *in Limine* #11: To Exclude References to Documents or Behavior Not in Evidence (ECF No. 3557);
- g. Defendants' Joint Motion *in Limine* No. 1: Motion for Pretrial Proffer and Ruling on Admissibility of Alleged Co-Conspirator Statements Under Fed. R. E. 801(d)(2)(E) (ECF No. 3559);
- h. Defendants' Motion *in Limine* #8: To Exclude Evidence and Argument Relating to Damages from "Spillover" or "Ripple" Effects of Foreign Price-Fixing Activities on U.S. Prices (ECF No. 3563-3);
- i. Defendants' Motion *in Limine* #12: To Exclude Plaintiffs' "Price Ladder" Theory of Recovery (ECF No. 3568);

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- j. Defendants' Joint Motion *in Limine* to Exclude Improper Characterizations of or Reference to Defendants and Alleged Co-Conspirators [Defendants' MIL No. 6] (ECF No. 3571);
- k. Defendants' Joint Motion *in Limine* No. 13 to Allow Full Defense Examination of Common Witnesses During Plaintiffs' Case-in-Chief and Limit Use of Deposition Testimony (ECF No. 3579);
- l. Defendants' Motion *in Limine* No. 2 to Exclude Evidence or Testimony Pertaining to Foreign Antitrust Investigations (ECF. No. 3583); and
- m. Defendants' Motion *in Limine* #5: To Exclude Plea By Samsung SDI Company, Ltd. as to Non-Pleading Defendants or, Alternatively, to Provide a Limiting Instruction (ECF No. 3589).

4. The IPPs withdraw the following motions with respect to the Toshiba Defendants:
 - a. IPPs' Motion *in Limine* No. 1: To Preclude Reference to Duplicative Recovery (ECF No. 3537).
 - b. IPPs' Motion *in Limine* No. 2: To Preclude Reference to Treble Damages, Fees, and Costs (ECF No. 3538).
 - c. IPPs' Motion *in Limine* No. 4: To Preclude Reference to Other Lawsuits Filed by Any of the Named Plaintiffs (ECF No. 3540).
 - d. IPPs' Motion *in Limine* No. 5: To Preclude Reference to Relationships Between Lawyers and Plaintiffs (ECF No. 3541).
 - e. IPPs' Motion *in Limine* No. 6: To Preclude Reference to Plaintiffs' Attendance or Non-Attendance at Trial (ECF No. 3542).

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1 f. IPPs' Motion *in Limine* No. 7: To Preclude Reference to or Argument
2 About How Class Plaintiffs Became Involved in This Case or That the
3 Case is "Lawyer-Driven" (ECF No. 3543).

4 g. IPPs' Motion *in Limine* No. 8: To Preclude Reference to and Exclude
5 Evidence of the Absence of Criminal Indictment, Conviction or Guilty Plea
6 (ECF No. 3544).

7 h. IPPs' Motion *in Limine* No. 9: To Preclude Reference to or Argument
8 About Plaintiffs' Failure to Mitigate Damages (ECF No. 3545).

9 i. IPPs' Motion *in Limine* No. 10: To Exclude the Testimony of Witnesses
10 Not Designated Pursuant to the Court's Scheduling Orders (ECF No.
11 3546).

12 j. IPPs' Motion *in Limine* No. 12: To Exclude Percipient Witnesses, Except
13 for One Party Representative, from the Courtroom Unless They Are
14 Testifying (ECF No. 3548).

15 k. IPPs' Motion *in Limine* No. 13: To Preclude Live Testimony of
16 Defendants' Witnesses Who Are Not Made Available to Testify Live in
17 Plaintiffs' Case-in-Chief (ECF No. 3549).

18 l. IPPs' Motion *in Limine* No. 14: To Limit Defendants' Deposition
19 Designations presented in Plaintiffs' Case to Reasonable Cross and to
20 Exclude Unrelated Designations (ECF No. 3550).

21 m. IPPs' Motion *in Limine* No. 15: To Preclude Reference to the Fact, Terms
22 or Amounts of Prior Settlements (ECF No. 3551).

23 n. IPPs' Motion *in Limine* No. 16: To Preclude Reference to and Exclude
24 Evidence of Other CRT Litigations (ECF No. 3552).

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- 1 o. IPPs' Motion *in Limine* No. 17: To (1) Preclude Argument That the
2 Samsung SDI Guilty Plea Includes DOJ Findings of Fact; (2) Exclude
3 Evidence of the Volume of Affected Sales in the Guilty Plea; (3) Exclude
4 Evidence of the Fact and amount of the criminal Fine; and (4) Exclude Any
5 Statement by the DOJ Characterizing the CRT Conspiracy (ECF No.
6 3553).
- 7 p. IPPs' Motion *in Limine* No. 18: To Preclude Argument That Price Fixing
8 was Pro-Competitive or Necessary (ECF No. 3554).
- 9 q. IPPs' Motion *in Limine* No. 19: To Exclude Character Evidence (ECF No.
10 3555).
- 11 r. IPPs' September 12, 2014 Motion to Compel Interrogatory Responses
12 (submitted to Special Master Walker).
- 13 s. IPPs' September 19, 2014 Motion to Compel Interrogatory Responses
14 (submitted to Special Master Walker).
- 15 t. IPPs' December 22, 2014 Motion to Compel Deposition of Shigekazu
16 Shibata (submitted to Special Master Walker).

17 5. The IPPs withdraw their joinders to the following joint motions with respect to the
18 Toshiba Defendants:

- 19 a. Plaintiffs' September 2, 2014 Motion to Compel the Toshiba Defendants to
20 Produce Deposition Witnesses (submitted to Special Master Walker) and
21 IPPs' related Response to Objection of Toshiba Defendants to Order
22 Granting Motion to Compel Production of Witnesses (ECF No. 3171).
- 23 b. Plaintiffs' October 29, 2014 Motion to Compel Responses to Requests for
24 Admission (submitted to Special Master Walker).

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6. The above motions and joinders shall be subject to reinstatement in the event that the Settlement Agreement does not become final and conclusive.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____

Hon. Samuel Conti
United States District Judge

White & Case LLP
701 Thirteenth Street, NW
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2 Dated: March 24, 2015
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Respectfully submitted,

WHITE & CASE LLP

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Lead Counsel for Indirect Purchaser Plaintiffs

26 Pursuant to Local Rule 5-1(i)(3), the filer attests that the concurrence in the filing of
27 this document has been obtained from each of the above signatories.
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CERTIFICATE OF SERVICE

On March 24, 2015, I caused a copy of the “THE TOSHIBA DEFENDANTS AND INDIRECT PURCHASER PLAINTIFFS’ STIPULATION AND [PROPOSED] ORDER WITHDRAWING PENDING MOTIONS” to be electronically filed via the Court’s Electronic Case Filing System, which constitutes service in this action pursuant to the Court’s order of September 29, 2008.

By: /s/ Lucius B. Lau
Lucius B. Lau (*pro hac vice*)

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